

REMARKS

Claims 1-13 and 15-48 are currently pending.

The most recent Office Action has indicated that claims 7 and 21 have been withdrawn from consideration. However, claims 17 and 21 were withdrawn from consideration in the Office Action dated January 30, 2003. Because claims 17 and 21 are method claims and claim 7 is a composition claim, Applicants believe the Office has intended to withdraw claims 17 and 21 from consideration.

Claims 17 and 21 depend from claims 16 and 1, respectively. Accordingly, Applicants will seek rejoinder of these claims upon indication of allowable subject matter. See, MPEP § 821.04.

The Office Action has rejected the pending claims under 35 U.S.C. §103 as obvious over U.S. patent 4,606,913 ("Aronson") in view of the Proceedings from the 5th World Surfactants Congress ("Proceedings"). In maintaining this rejection, the Office Action has asserted that (1) Proceedings relates to an oral disclosure which indicates a "public use" under § 102 (b) and/or prior art under § 102 (a); and (2) the previously submitted Rule 131 declaration was unpersuasive because the underlying documents demonstrating Applicants' invention prior to May 29, 2000, were in French, not English. In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

First, both the "prior knowledge/use" provision of § 102 (a) and the "public use" provision of §102 (b) require the prior art activity to occur in the U.S. (i.e., "in this country"). Because Proceedings relates to a conference held in Italy, it cannot satisfy either the prior knowledge/use provision of § 102 (a) or the public use provision of §102 (b). Thus,

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Proceedings does not constitute prior art. For this reason alone the rejection is improper and should be withdrawn.

Second, Applicants submit herewith an English translation of the notebook pages submitted with the Rule 131 declaration. This translation, together with the previously submitted Rule 131 declaration, demonstrate that the claimed invention was prepared in France prior to the alleged starting date of the Italian conference (May 29, 2000). Because the claimed invention was prepared prior to the earliest date reflected on Proceedings, Proceedings cannot constitute prior art under § 102.¹ For this reason as well, the rejection is improper and should be withdrawn.

Finally, Aronson neither teaches nor suggests the claimed emulsifiers. Thus, Aronson cannot teach or suggest the present invention.

In view of the above, Applicants respectfully submit that the rejection under 35 U.S.C. § 103 is improper and should be withdrawn.

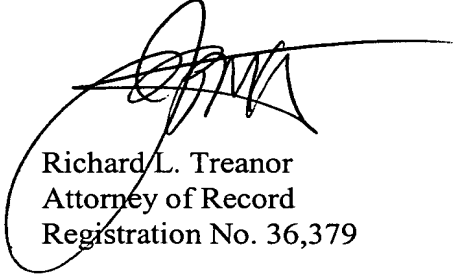
¹ Proceedings relates to a conference apparently held May 29-June 2, 2000, in Italy. However, there is no indication when the Proceedings publication became publicly available, let alone evidence showing that the publication became publicly available more than 1 year prior to the present application's U.S. filing date. Accordingly, no evidence exists indicating that the Proceedings publication constitutes prior art under 35 U.S.C. § 102 (b).

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Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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[see original for numbers]

Formula ID error at 90.1, water in moritz

heterogeneous ID bcp large poorly dispersed globules [illegible] garbage can

Paste 300 RPM

Same formula as 0899.89 in the process taken fairly coarse but homogeneous

[see original for numbers]

ap émulsification = after emulsification

[bailiff's stamps]

60

moritz 3000 RPM

99 globules

[see original for numbers]

ap émulsification = after emulsification

[bailiff's stamp]

66

TRM Control Lubrizol 621772

[bailiff's stamp]

80

Lubrizol

[see original for numbers]

Paste 300 RPM at 25 deg. C

Very coarse and fluid

= 0 speed increase to 500 RPM to test thickness and [illegible] OK

[bailiff's stamp]

84

Inversion 4

-- Oily phase

-- Aqueous phase = 90 g water at 1% of mp504

Stirred at deflocculating machine at maximum speed

Inversion after addition of approx. 19.11 g of phase.

Inversion 5

-- Oily phase

-- Aqueous phase = 90 g water at 1% mp504

Stirred at deflocculating machine at high speed.

Inversion after addition of approx. 608 g of oily phase.

Aimed at four!

[bailiff's stamps]